

ILECs object that the Commission has prohibited ILECs from imposing the entire incremental cost of these interim number portability measures on new entrants -- who are claimed to be the "cost causers" -- and that the Commission's order provides, instead, for the competitively neutral recovery of these costs through such means as assessments on all carriers based on relative revenues, markets shares, or numbers of customers served.

First, BellSouth contends that the Commission has no "jurisdiction" over "transitional" forms of number portability and that the statutory requirement of competitively neutral cost recovery applies only to "permanent" number portability arrangements that fully comply with Section 153(30)'s definition of "number portability."⁷⁰ This claim is baseless, and was correctly rejected in The First Report and Order.⁷¹ Section 251(b) requires that carrier "provide, to the extent technically feasible, number portability in accordance with the requirements of the Commission," and Section 251(e)(2) provides that the "cost of . . . number portability shall be borne by all carriers on a competitively neutral basis as determined by the Commission." Because RCF, DID, and like arrangements have been determined to be the only forms of number portability that are technically feasible today, the Commission not only had "jurisdiction" to establish their requirements, but also had the statutory duty to establish competitively neutral means of imposing their costs on "all carriers."

⁷⁰ See BellSouth Petition, pp. 4-7.

⁷¹ First Report and Order, para. 110.

Second, BellSouth, GTE, and CBT have claimed that it was arbitrary and capricious, and even unconstitutional, for the Commission to provide for the recovery of interim portability costs not from the alleged cost causers, but from all carriers on competitively neutral bases. This claim is frivolous even apart from the fact that the statute requires the principles that the Commission adopted. The costs of number portability -- like the costs of removing other artificial legal and economic barriers to local exchange competition -- are not "legitimate cost of entry" of CLECs,⁷² but costs of creating a competitive environment that will benefit all consumers. The costs are thus appropriately placed on all carriers on neutral bases, so that the costs can be passed through to and recovered from customers generally.

In this regard, while it is true that ILECs will bear a percentage of the costs proportionate to their very large relative share of the total business, that is necessary and proper. Contrary to GTE's claims, it merely "ensur[es] that all carriers share the cost burden of implementing interim number portability."⁷³ Similarly, a necessary and proper consequence of the spreading of these costs among all carriers will mean that new entrants will bear relatively small fractions of the costs and will not be put at a relative cost disadvantage by virtue of their small initial market shares.⁷⁴

⁷² BellSouth Petition, p. 8.

⁷³ GTE Petition, p. 12.

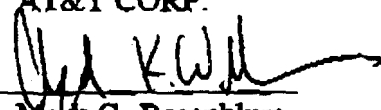
⁷⁴ Cf., GTE Petition, p. 11.

Finally, GTE's and CBT's suggestions that these cost recovery principles will effect a taking of property in violation of the Federal Constitution are frivolous. The principles will merely impose on ILECs their fair share of costs that are imposed to benefit the public, and ILECs have the same opportunity to recover their share of these costs in retail rates as do CLECs. Further, even if there were any basis for believing that market forces or state regulation could prevent ILECs from recovering their fair share of these costs -- as there is not -- an ILEC could then advance a taking claim against state authorities only upon a showing that the "end result" of a state rate order as a whole was to deprive the ILEC of sufficient revenues to cover operating costs and to attract capital.⁷⁵ Such a showing is an impossibility where, as here, an order could only affect a small fraction of an incumbent monopolist's costs.⁷⁶

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⁷⁵ See, e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

⁷⁶ See, e.g., id.

ATTACHMENT A

AIRTOUCH COMMUNICATIONS, INC. ("AirTouch")
AMERICAN COMMUNICATIONS SERVICES, INC. ("ACSI")
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
("AMTA")
Bell Atlantic
Bell Atlantic NYNEX Mobile ("BANM")
BELLSOUTH Corporation, BellSouth Telecommunications, Inc. ("BellSouth")
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION ("CTIA")
CINCINNATI BELL Telephone Company ("CBT")
GTE Service Corporation ("GTE")
JOHN STAURULAKIS, INC. ("JSI")
KMC Telecom, Inc. ("KMC")
MCI Telecommunications Corporation and MCI Metro ("MCI")
NATIONAL EXCHANGE CARRIER ASSOCIATION ("NECA")
Nextel COMMUNICATIONS, INC. ("Nextel")
NEXTLINK COMMUNICATION L.L.C. ("NEXTLINK")
National Telephone Cooperative Association ("NTCA") and the Organization for the
Promotion and Advancement of Small Telecommunications Companies ("OPASTCO")
NYNEX Telephone Companies ("NYNEX")
PACIFIC BELL MOBILE SERVICES
Pacific Telesis Group and its subsidiaries Pacific Bell, Nevada Bell and Pacific Bell
Mobile Services ("Pacific Telesis")
SBC Communications, Inc. ("SBC") on behalf of Southwestern Bell Telephone
Company ("SWBT"), Southwestern Bell Mobile Systems, Inc. ("SBMS"), and
Southwestern Bell Communications Services, Inc. ("SBCS")
U S WEST, Inc. ("U S WEST")
UNITED STATES TELEPHONE ASSOCIATION ("USTA")

CERTIFICATE OF SERVICE

I, Karen Gillis, do hereby certify that on this 27th day of September, 1996, a copy of the foregoing "AT&T Opposition To Petitions For Reconsideration And Clarification" was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

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